



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

THE  
AMERICAN LAW REGISTER  
AND  
REVIEW.

---

AUGUST, 1893.

---

STATE RAILROAD COMMISSIONS.

(Continued from page 639.)

---

BY WILLIAM S. ELLIS, ESQ.

---

II.

DUTIES AND POWERS.

THE nature of the duties and extent of the powers of a railroad commission depend, as they do in the case of all commissions, upon the terms of the creating Act. There has been an unmistakable tendency on the part of the courts to confine such bodies strictly to the exercise of the powers conferred upon them by the statute which has brought them into existence and by any subsequent amendatory legislation. As Chief Justice THAYER, of the Oregon Supreme Court, said in deciding against an attempted extension of the rights of the commission of that State, "It has for a long time been considered the safer and better rule in determining questions of jurisdiction of boards and officers exercising powers delegated to them by the legislature, to hold that their authority must affirmatively appear from the commission (statute) under which they claim to

act. Should the question of the extent of that authority be left to inference, serious disturbances might arise involving a conflict of jurisdiction which would be highly detrimental to the community."<sup>1</sup> On an examination, however, of the legislation in the various States which have adopted the commission system there is found as wide a difference in the character of the work prescribed for each and in the extent of the control which each must exercise as was seen to be in the manner of their formation, and it remains to be seen, in considering the force and effect of the many means adopted to accomplish a common purpose, namely a beneficial restraining influence on the part of the public over the railroad corporations, which of the several policies has proved the most successful.

The words "duties" and "powers" have no separate and distinct meaning as used in the statutes, but are so mingled as to become confusing in an endeavor to determine just how far the jurisdiction of each commission really extends. It is more convenient to regard as *duties* all those acts of a commission which are either expressly prescribed (such as the duty of inspection at stated periods), or which are left to their discretion and depend upon the happening of certain contingencies (such as the investigation of accidents), whether they are of the board's own motion or upon complaint. By *powers* will be meant the extent of the commission's authority as regards its ability to enforce its orders or decrees against the corporations.

In the first place it is to be noticed that the jurisdiction of the commission is confined in some States to "railroads operated by steam," as in Virginia, while in others, as Massachusetts and New York, the street railways are included within the act. Illinois has a "Railroad and Warehouse" commission, and the Kansas and Minnesota express and sleeping car companies are also subject to the authority of the commission.

The duty of general supervision is thus stated in the

<sup>1</sup> Railroad Commissioners v. Railway, etc., Co., 17 Oregon, 65 (1888).

Massachusetts Act: "The board shall have the general supervision of all railroads and railways, and shall examine the same, and the commissioners shall keep themselves informed as to the condition of railroads and railways and the manner in which they are operated, with reference to the security and accommodation of the public, and as to the compliance of the several corporations with their charters and the laws of the commonwealth."<sup>1</sup> There is a similar clause in all the other Acts.

The frequency of examination is either left to the commission's discretion or is prescribed. Connecticut requires that every railroad in the State shall be examined at least twice a year. In New Hampshire they not only examine the roads themselves, at least once each year, but also "make personally a full examination into the condition of the proprietors of every railroad and the management of their affairs, and inspect, as far as practicable, all books, accounts and papers." In order to authorize such an inspection of the books of a corporation in Massachusetts, on the other hand, an application in writing of a director, or any person owning a certain amount (one-fiftieth) of the capital stock or of the bonds is necessary.

As has already been seen, every facility is provided the commissioners of all the States to enable them to thoroughly inspect the physical, and when necessary the financial, conditions of every road. They can at all times enter the offices, station houses and other buildings, as well as the cars of the corporation, and they are provided with passes for their own use and for those whom they are authorized to employ to assist them in performing their duties.

Such, in a general way, is the broad statement which every creating Act contains of the purpose for which the commission exists. To enumerate the *special* duties assigned each board is not possible here. Their number depends upon the extent of the power *generally* conferred by each statute. Those acts which have produced commissions with great power do not contain a careful state-

<sup>1</sup> Pub. Sts. of Mass. (1882), chap. 112, § 14.

ment of the various special duties imposed, while those creating advisory boards name specifically a large number of matters which are placed under their supervision. In Massachusetts,<sup>1</sup> for instance, where the commission is of the purely advisory kind, the following are among the particular duties impressed upon the board: To inform the corporation in writing of the improvements and changes which it considers to be proper whenever it "deems that repairs are necessary, or that the addition to its rolling stock, or addition to or change of its stations or station houses, or a change in its rates of fares for transporting freight or passengers, or in the mode of operating its road or conducting its business, is reasonable and expedient in order to promote the security, convenience and accommodation of the public;" to "approve and fix the route of a railroad in a city or town when the local authorities cannot agree with the directors of the railroad concerning it," and the clerk of the board is to certify that the requirements of the law have been complied with before the articles of association are filed; to "approve the location and construction of every new road (a sworn estimate of the cost of construction and statement of the fact that a certain amount of stock is subscribed or paid in having been received) before operations shall be begun on it;" to give its consent to the crossing by one road of another at grade, or of navigable waters; to examine the laws relating to the construction of railroads, and see that every new road has complied therewith and is in a safe condition before opening for use; to arbitrate, at the desire of either party, between disputing roads when the question is one involving rights of shipment of each others cars under agreement; to "regulate the transportation of explosives," and "approve the use of certain mechanical appliances," and "grant the right to run trains on the Lord's day."

These and one other important duty, which will be taken up later, are among those assigned the Massachusetts commission. The many subsequent additions since the

<sup>1</sup> Pub. Sts. of Mass. (1882), chaps. 112, 113.

passage of the original Act cannot be mentioned here.<sup>1</sup> The New York law contains many similar, but in the original statute a less number of, provisions.<sup>2</sup> The Connecticut commission,<sup>3</sup> which is an exception to the general rule that the greater the power the less precise the statement of duties has, among others, these provisions: The board has authority to make such rules as to "platforms and outbuildings as are for the public interest ;" "to prescribe the time during which any ticket office shall be open for the sale of tickets ;" to make necessary orders for compelling companies to furnish comfortable seats for passengers, and for regulating the manner in which companies shall manage their engines and cars at highway crossings ; to direct that suitable warning boards be put up at dangerous crossings ; to order gates, flagmen, or signals to be provided ; to prescribe the limit within which land may be taken for railroad purposes, etc., etc.

It is unnecessary to illustrate further these minor matters which are under the supervision of the board. The subjects of most importance to the public as well as to the corporations, with which the commissions have to deal, are the investigation and report of accidents, and the regulation of rates.

When an accident, resulting in loss of life or injury to any person, occurs on any railroad within the State of New York the company is obliged to notify, by its general superintendent, or manager, the board of its occurrence. Thereupon the commissioners, if in their judgment such accident warrants investigation, give the corporation reasonable notice of the time and place of entering thereupon.<sup>4</sup> At the hearing the matter is carefully sifted, and every effort made to fix the blame and responsibility. The pro-

<sup>1</sup> See Pamphlet *Laws of Massachusetts*, since 1882, and the *Railroad Commissioners' Reports*.

<sup>2</sup> See *N. Y. Laws of 1882*, chap. 503, and 1890, chap. 565, and also the *Commission's Reports*, which contain an excellent summary of the various additions to and changes in the creating Act.

<sup>3</sup> *Laws 1877, Connecticut*, chap. 145, p. 232, *et seq.*

<sup>4</sup> *N. Y. Laws of 1890*, chap. 565, art. VI, § 159.

ceeding is practically the same in all the other States, excepting that in some instances no mention is made of the obligation on the part of the railroads to call the board's attention to the accident.<sup>1</sup> In Rhode Island and Connecticut either notice from the road, or "public rumor," of an accident, authorizes the board to proceed, and in these States they are to "visit, personally, the scene of the occurrence, and inquire into the facts and circumstances."<sup>2</sup> The Rhode Island Act has the further unique requirement that "the commissioner shall, without charge, furnish any injured person, or the friend of any person who has been killed, any information he shall have obtained in relation to such disaster, and the names of the persons from whom the same was obtained, and by whom the same may be proved."<sup>3</sup> In Vermont the attorney-general (in Maine the county-attorney) must be notified of the result of the hearing.<sup>4</sup> In Iowa and Colorado "the report of the board after investigation is especially excluded as evidence, or from being referred to in any case in any court."<sup>5</sup>

In all cases the commissioners are required to incorporate into their reports a full record of the result of their investigation of accidents, showing all the circumstances attending each one, and the conclusions at which they have arrived as to the cause and responsibility. Many of the reports contain very complete tables showing the number of accidents occurring within the State upon each road, and other comparative tables referring to past years. In the Massachusetts reports especially are found most careful and minute records of each disaster.

Every means is given to enable the commissioners to thoroughly investigate the facts of every accident (and this applies to all other subjects which they have the right to

<sup>1</sup> As in Massachusetts.

<sup>2</sup> Rhode Island: Pub. Sts., 1882, chap. 158, § 28. Connecticut: Pub. Sts., 1887, § 567. Also Mississippi: Laws, 1884, chap. 23, § 13.

<sup>3</sup> Laws Rhode Island, 1889, § 758.

<sup>4</sup> Vermont Laws, 1888, 20. Maine Laws, 1891, 120.

<sup>5</sup> Laws Iowa, 1878, chap. 74, § 14; Laws Colorado, 1885, p. 314, § 17.

examine into). They may summon witnesses,<sup>1</sup> and administer oaths and take testimony, and witnesses may be compelled to attend by an application to the discretion of a judge of the proper court. In New York "all subpoenas shall be issued by the president of the board, or by any two members thereof." This board has the additional right, not granted in Massachusetts, to examine the books and affairs of the corporation on whose line the accident has occurred, if such is considered necessary to arrive at a satisfactory conclusion, although it is necessary, in order to accomplish this, that at least one member of the board shall sit for hearing in the town in which the principal office of the road is situated.<sup>2</sup>

The board having made up its mind as to the questions of cause and blame, notifies the railroad of its finding, and recommends any change in the construction or operation of the road, or the discharge of any culpable employee, etc. Whether this recommendation amounts to an order or not depends upon the extent of the board's powers.

By far the most important feature of a railroad commission is the way in which it deals with the question of the regulation of rates and tariffs. This, more than anything else, affects the prosperity of the corporation, and upon it depends, to a great extent, whether the relations between the public or the commission on the one hand, and the railroad on the other, are harmonious. Nearly all other subjects of supervision or control have to do merely with the safety, comfort and convenience of the traveling public. The regulating of charges, however, is altogether a different matter, and railroad commissions are usually classified with reference to the extent of their authority in that direction.

Although the regulation is undoubtedly a *duty*, as here understood, it is necessary to consider the subject in connection with the commission's *powers*, as the variations in

<sup>1</sup> Witness fees for travel and attendance to be the same as for witnesses before the Superior Court (Massachusetts).

<sup>2</sup> N. Y. Laws, 1890, chap. 565, § 159.



the statutes are only as regards the force of the decisions, and the circumstances under which the cases arise—generally upon complaint—can be considered incidentally.

In what cases and to what extent are the decisions of the several commissions binding upon the corporation, and when, on the other hand, do they amount to recommendations merely? Upon this their real character, of course, depends.

They may be divided into two principal groups: (1) Those, generally called “advisory” commissions, which although they have the right in the case of any violation of the State laws to report the same to the proper authority—the attorney-general usually—cannot enforce their own orders and decrees; and (2), those which have the power not only to guard against any disregard of charter duties and statute laws, but also to compel the acceptance of their own decisions.

Contrast the provisions of the Massachusetts with those of the Minnesota Act. The former are: “The board, whenever in its judgment any such corporation has violated a law, or neglects in any respect to comply with *the terms of the act by which it was created, or with the provisions of any law of the Commonwealth*, shall give notice thereof in writing to such corporation; and, if the violation or neglect is continued after such notice, shall forthwith present the facts to the attorney-general, who shall take such proceedings thereon as he may deem expedient.”<sup>1</sup> Beyond this, the Massachusetts commission has no power whatever to either apply to the courts itself or to cause proceedings to be instituted by the attorney-general as to the neglect of any of its own rulings on the part of the railroads. Those rulings amount to nothing more than suggestions, except, apparently, in one or two minor subjects inserted since the passage of the original Act, and these suggestions the roads can either accept or reject as they please.

The Minnesota statute<sup>2</sup> provides, in addition to the powers granted in Massachusetts, that “whenever the com-

<sup>1</sup> Laws 1882, chap. 112, § 15.

<sup>2</sup> Act of 1885.

mission considers any change in the mode of operating or conducting a railroad, etc., etc., it shall notify the carrier to that effect, and, if such notice is disregarded, the commission shall proceed to enforce it by instituting proceedings in the proper court," and the attorney-general is instructed to sue "whenever the common carrier, after due investigation and hearing, refuses to obey the order of the board."

The Massachusetts statute best illustrates the nature of the powers conferred upon the purely advisory commission, while the above clause from the Minnesota Act illustrates the general extent of the powers granted to boards of that class.

In some States the board is authorized, in case of a violation of the general railroad or statute law or of the terms of charter, to apply directly to the courts for "injunction or other proper remedy."<sup>1</sup>

In Virginia the report of any disregard of the roads to obey the laws after notice from the commissioners is made to the Board of Public Works, which board, if it deems proper, thereupon authorizes the commissioners to make application by a bill in equity for an injunction.

Thus it is the province of all commissions to keep a watchful eye upon the railroads, and to at least report any failure of theirs to live up to their obligations as expressed in the laws of the State or in their charters, and in the case of boards with greater powers to also take the matter of prosecution into their own hands.

Within what limits, and as to what subjects are those latter commissions authorized to enforce *their own* decisions?

It has been already noticed that the acts delegating a greater amount of power contain a less number of specially included subjects of jurisdiction than those creating commissions of the advisory kind. The matter of rates, however, is an exception. In the Southern and Western States the main object of railroad legislation has been to prevent abuses of a financial character rather than for the purpose

<sup>1</sup> New Hampshire, Vermont, California, North Dakota, S. Carolina.

of securing the safety and comfort of the public, as is done in Massachusetts, and there the powers of the commissioners have been directed principally against the subject of rates and tariffs.

The authority of the Massachusetts board over rates is merely of the recommending and reporting kind, of course, and the subject receives little mention in the law.<sup>1</sup> In New York, also, this question is also of apparently slight importance, except as regards a general caution against excessive charges and discrimination, and although the commission is granted the power to report to the attorney-general any violation of its own orders, as well as of the laws of the State, these orders seem to amount only to a recommendation.<sup>2</sup>

On the other hand, Georgia thus deals with the question of rates:<sup>3</sup> The commissioners are directed to make for each railroad doing business in the State a schedule of reasonable maximum rates for transportation of passengers and freight, and this schedule shall be taken in all courts in suits for extortion, etc., as *prima facie* evidence that such rates are reasonable maximum charges.<sup>4</sup>

In Missouri and Mississippi the above is to take place only on failure of the railroads to publish rates, in which case they must be approved by the board.

"The commissioners may revise such rates from time to time."<sup>5</sup>

In Iowa, "if complaint is made of the rates charged by any railroad, or of the schedule fixed by the commissioners, it shall be the duty of the commissioners to investigate. If such complaint is not trivial or frivolous, the board shall fix a day for hearing. At the hearing the burden of proof shall not be on complainant, but he or they may introduce schedules of other States and of other rail-

<sup>1</sup> There is one clause assigning to the commissioners the duty to revise *milk* rates, but this too, it seems, is merely recommendatory.

<sup>2</sup> *People of N. Y. v. Lake E. & West. R. R.*, 104 N. Y., 58.

<sup>3</sup> Also New Hampshire, Illinois, Iowa, Kansas, Texas, S. Carolina.

<sup>4</sup> "And these schedules must be posted in stations and other conspicuous places" (within stated times varying in different States).

<sup>5</sup> New Hampshire, Texas, Idaho, Illinois, Georgia.

roads within the State (of Iowa), and the lowest rates charged by other railroads within or without the State for similar transportation to that in question shall be *prima facie* evidence of reasonableness. After hearing, the commissioners shall fix the rates, which in no event shall exceed those fixed by law. Such decision must specifically set forth the sums to be thereafter charged, and a classification of such freight, etc., must be made, and such decision shall not be limited to the particular case, but shall embrace any part of the railroad fairly coming under the investigation. Such fixed rates shall be *prima facie* evidence, in future cases in courts of the State, of their reasonableness."

In Minnesota, "in case the commission finds at any time that any part of the rates, tariffs, charges, etc., which have been filed and published are unreasonable, they may change the same" and compel the corporation to adopt the change.

In South Carolina "the commissioners shall make such just and reasonable rules and regulations as may be necessary for preventing unjust discrimination, giving of rebates or bonus, or misleading the public, and they shall have power to fix rates for longer and shorter distances, and determine what are longer and shorter distances."

It is unnecessary to consider at greater length the character of these provisions. The difference between such powers and those delegated to "advisory" boards is quite evident.

Railroad commissions are then, generally speaking, of two kinds, those which are advisory, and those which are regulative. The first rely upon the inherent force and common sense of their suggestions for recognition and obedience on the part of the corporations, and a study of the reports of commissions of that class will show how seldom their recommendations are disregarded. Those on the other hand which are authorized to deal more peremptorily with the railroads, and were created for the purpose of enforcing State laws of a more oppressive character, are, if they attempt to any extent to carry out the object for

which they exist, less apt from their very nature to accomplish that object without antagonizing the roads.

The functions of an advisory commission are, first, to exercise a wide restraining and improving influence upon the roads by co-operating with them in an endeavor to appreciate the growing needs of the public, and second, to inform and instruct the public at large on all general and special subjects of railroad legislation. A secretary of the Massachusetts commission has said that the theory upon which a board with such limited powers is created is that "it should be the means of concentrating public opinion and bringing it to bear intelligently and persistently upon abuses which it is desirable to reform, without resorting to the power of the legislature," and Mr. C. F. ADAMS has aptly described this commission as "simply a medium, a species of lens by means of which the otherwise scattered and powerless rays of public opinion are concentrated to a focus, and brought to bear upon any corporation."

Of course, the *personnel* of any commission is that upon which its success really depends, but it would seem that even with a board composed of men of the fairest minds and highest attainments the restriction of their powers is the most advisable course, especially in those sections of the country which possess a highly intelligent population. There the necessity for restrictive legislation, and for the placing in the hands of a specially appointed body the duty of carrying out such laws, is not apparent.

One subject, made the special duty of the boards in several States—notably Massachusetts and New York—has not been included in the general list. The Massachusetts commission is required to make in its annual report to the general court, not only "all facts and explanations as will disclose the actual working of the system of railroad transportation in its bearing upon the business and prosperity of the commonwealth," but also "such suggestions as to its general railroad policy, or any part thereof, . . . as may seem appropriate," and the New York Act imposes the further duty upon the board of "recommending and drafting for the legislature such bills as will in their judg-

ment protect the people's interest in and upon the railroads of the State." This right has been exercised to a great extent in both instances, and the many additions to the railroad law of each of these States which have been made at the suggestion or with the advice of its commission, testify to the harmony existing between boards of this class and the State government, as well as to the influence which they indirectly but properly exert upon the corporations.

---

## RESTRICTIONS UPON LOCAL AND SPECIAL LEGISLATION IN THE UNITED STATES.

BY CHARLES CHAUNCEY BINNEY, ESQ.

---

### II.

#### THE DISTINCTIONS BETWEEN GENERAL, LOCAL AND SPECIAL LEGISLATION.

THE word "general" is defined by Webster as "relating to a genus or kind; pertaining to a whole class or order;" while "special," by the same authority, means "pertaining to a species or sort; designed for a particular purpose or person;" and "local," "pertaining to a particular place, or to a fixed or limited portion of space."

The term "general law," as used in our State constitutions, has not been found easy of definition, and no court has as yet undertaken to state its meaning with any great measure of exactness.<sup>1</sup> It is clear that it is not merely a law in regard to a general subject, for if the subject be regulated in a particular locality only, or as affecting particular persons, the law regulating it is local or special, and not general.<sup>2</sup> From the definitions given above, it

<sup>1</sup> See the remarks in the opinions in *Earle v. San Francisco Board of Education*, 55 Cal., 489; *Matter of N. Y. Elev. Ry. Co.*, 70 N. Y., 327, 350; *Matter of Church*, 92 id., 1; *State v. Lean*, 9 Wis., 279.

<sup>2</sup> See *Ryan v. Johnson*, 5 Cal., 85; *People v. C. P. R. Co.*, 43 id., 398, 433; *State v. Judges*, 21 Ohio St., 1; *State v. Covington*, 29 id., 102; *McGill v. State*, 34 id., 228; *State v. Shearer*, 47 id., 275.